Los Angeles County
Department of Regional Planning

Planning for the Challenges Ahead

Richard J. Bruckner
Director

March 26, 2015

TO: Pat Modugno, Vice Chair
Esther L. Valadez, Commissioner
David W. Louie, Commissioner
Stephanie Pincetl, Commissioner
Curt Pedersen, Commissioner

FROM: Jay Lee, AICP JL
Community Studies North Section

LOS ANGELES COUNTY DRAFT RENEWABLE ENERGY ORDINANCE – PROJECT NO. R2014-01160-(1-5) – APRIL 8, 2015 – AGENDA ITEM NO. 5

INTRODUCTION

The Renewable Energy Ordinance (Ordinance) is a Countywide ordinance that amends Title 22 (Planning and Zoning) of the Los Angeles County (County) Code to establish a set of procedures and standards for review and permitting of solar and wind energy projects. These include solar and wind projects generating energy for on-site (small-scale) or off-site (utility-scale) use as well as temporary meteorological towers.

MARCH 18, 2015 PUBLIC HEARING

A public hearing on the Ordinance and the Draft Environmental Impact Report (EIR) was held before your Commission on March 18, 2015 at the Antelope Valley Transit Authority Headquarters in the City of X. Members of the public testified and raised various concerns regarding the Ordinance. Please see Attachment 1 for written correspondence received during the public hearing. Your Commission also raised questions for Department of Regional Planning (DRP) staff, and continued the matter to April 8, 2015.

COMMENTS AND RECOMMENDATIONS

As of time of writing, DRP staff is continuing to evaluate the comments received during the hearing and within the additional correspondence. Please see Attachment 2 for the additional correspondence received since the March 18, 2015 public hearing. A further discussion of these comments and recommendations, as well as any proposed modifications to the Ordinance, will be included in a supplemental memo to your Commission distributed next week. An updated staff recommendation, if necessary, will also be included in the supplemental memo.

MC:SMT:JL

Attachments: 1: Written Correspondence Received During the March 18 Hearing
2: Additional Correspondence Received Since the March 18 Hearing

ATTACHMENT 1: WRITTEN CORRESPONDENCE RECEIVED DURING THE MARCH 18 HEARING

R 2014-01160-(1-5)
J. Lee/R Ruiz

Kathleen Trinity
4343 Fairlane St.
Acton, CA 93510

March 18, 2015

RECEIVED
MAR 18 2015
BY:

Mr. Jay Lee
Los Angeles County
Department of Regional Planning
320 West Temple St.
Los Angeles, CA 90012

Dear Mr. Lee

I am writing in regard to your Notice of Completion and Availability of the Draft Environmental Impact report (SCH#2014051016).

I object to any policy that would allow the development or placement of large scale and/or multiple wind turbines in any part of Acton, CA, including any mountains and hills (the Sierra Pelona Mountains, the San Gabriel Mountains, Parker Mountain) or any other included or adjacent mountains and hills in the general area.

Not only would such wind turbines be contrary to Acton's CSD's, thereby violating the wishes of the residents for a rural setting and lifestyle, but would pose a significant threat to wildlife and wild life habitat. The surrounding mountains and included hills of Acton are covered with juniper trees, grasses, chaparral, scrub oak, and some California live oak that provide habitat for mule deer, mountain lions, bobcats, coyotes, rabbits, various other rodents, reptiles, some of which are endangered, and even birds, bats and insects. The ecosystem is fragile in the sense that destruction of it can take decades to restore. The area, especially the Sierra Pelona Mountains, provide a natural corridor for mule deer, bobcats, and mountain lions. This habitat is of special value considering the large scale loss of habitat in the San Gabriel Mountains Station Fire of August 2009. Loss of habitat is insidious because in this area it leads to habitat fragmentation.

5. Brewer's Sparrows and other sparrows live and feed in scrub.

6. Scrub (Blue) Jays live and feed in scrub.

7. Western Bluebirds, California Thrashers, various Wrens, Goldfinches, Mockingbirds, Woodpeckers and Roadrunners frequent and depend on the scrub.

8. Mourning Doves, Barn Swallows, Rock Doves, Blackbirds and Ravens are higher flyers that would be endangered by said wind turbines.

9. Bats have been part of the Acton ecology for years. Their ability to keep insect populations in check is of value. Many have been in danger of species collapse in recent years. Their flocks would be threatened further by said wind turbines.

While there are many more birds and other animals that would be threatened by implementation of the proposed policy, there is a most important consideration. Wisdom and courage to preserve natural and wild areas must prevail to inform and guide policy, not utility interests or quick, thoughtless agency directives. Acton and the surrounding area is one of the last rural and semirural areas of Los Angeles County. Not only does the area provide recreational opportunities for nonresidents, but the residents who have chosen to live in Acton prize the mountains, canyons, valleys and open natural spaces. Natural vistas unobscured by utility and other structures provide a means of relieving stress and psychological centering. Knowing that wildlife is abundant and secure is part of the human quality of life in a rural area. Rather than making the mistake of degrading the natural character of this area, and trying later to fix the mistake, wisdom would dictate a much more careful and respectful policy be pursued. Will we make the same mistakes as in the Altamont Pass where at least 116 golden eagles, and over 500 other raptors were killed per year in a study in a study released in 2003? (www.iberica2000.org/documents/ELOICA/ALTAMONT/Dr Smallwood, 2003). Will we follow the

RIDGELINES

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The Acton CSD contains specific provisions that protect "significant ridgelines" and it clearly defines what constitutes a "significant ridgeline" within the Community of Acton.

However, the draft Ordinance only protects ridgelines from low-profile solar projects and small scale wind projects. It specifically omits ridgeline protection provisions for utility scale wind projects. In other words, this ordinance authorizes 500 foot high wind towers on Acton's significant ridge lines "by right".

This ordinance does not protect ridgelines; in fact, it paves the way for their destruction.

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J. Lee/R-RR012

CUP VS MINOR CUP REVIEW FOR UTILITY SCALE PROJECTS.

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The draft Ordinance establishes that utility scale structure mounted wind projects are eligible for the "Minor Conditional Use Permit" process.

No utility scale energy project should ever be eligible for the "Minor" CUP process. Why? Because the nature of utility sale projects are ***never*** "limited in scope and impacts",. So allowing them to undergo the "Minor" CUP process ***is explicitly contrary*** to the stated intent of the minor CUP process, which is intended to address only applications that are limited in scope and impacts.

All utility scale renewable generation systems be subject to the full and complete Conditional Use Permit process rather than the "Minor" Conditional Use Permit Process.

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NOISE

The consideration of noise impacts in the Draft Ordinance is inadequate:

The noise limit does not apply to utility scale wind projects, which are the biggest problem. The noise limit is too narrowly constrained in the draft Ordinance, and must be expanded to address all utility-scale generation projects.

It considers only noise impacts to existing inhabited dwellings, and ignores outdoor uses such as equestrian facilities (barns, corrals, trails), animal rescue facilities, etc.

It ignores impacts to adjacent land that are currently undeveloped. It is likely that such land will be rendered worthless given the high noise threshold that the draft ordinance allows. Any noise limit must be a fenceline limit

It establishes a very high (60 dB) noise threshold that is entirely unsuitable for rural areas. Rural ambient noise levels are typically less than 45 dBA, so permitting a 15 dBA increase will triple the noise level in rural areas. To be clear, 60 dBA is the noise level one experiences 3 feet from an operating clothes dryer, and the draft Ordinance allows this continuous and exceptionally loud "noise overlay" in rural areas where the existing noise profile is virtually non-existent. The limit must be set at 45 dBA rather than 60.

The draft Ordinance does not require any project proponent to provide noise data as part of the application process, nor does it require a "followup" assessment at the site to confirm that noise limits are met. Worse yet, it provides no backstop protections to ensure compliance with this noise limit over time and after the wind turbine bearings and contact surfaces are worn down and no longer "true".

DUST

The draft Ordinance authorizes the use of "soil binders" to control dust on access roads and other disturbed areas. However, soil binders in this application are not appropriate:

They do not hold up to pedestrian or vehicular traffic, and are not effective on access roads.

They do not penetrate compacted soils, and are therefore ineffective.

Their performance is soil-texture specific; some do not work on sandy soils, and others do not work on silty soils. Both soil types can be collocated within the Antelope Valley, so it is unlikely that an effective soil binder will be found.

Soil binders do not perform well in low humidity areas, so are inappropriate for the high desert climate of the Antelope Valley.

The use of soil binders may have water quality impacts due to their chemical makeup. Throughout the Antelope Valley, residents rely on wells for drinking water, therefore authorizing the use of soil binders in the Antelope Valley without first documenting the potential impacts of such materials on drinking water quality is wholly inappropriate.

It is also a problem that the draft Ordinance relies on existing vegetation to control dust levels. This presumes that existing vegetation which thrives on the full sunlight of the Antelope Valley and relies on dew condensation will continue to survive when covered over entirely by solar panels which eliminate both light and condensation.

Worse yet, the draft Ordinance contains no "back up" dust control provisions that must be implemented if (or rather when) the native vegetation dies out

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J. LEE/R. RUIZ
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THE THRESHOLD FOR AVOIDING COMPLIANCE IS TOO LOW

The draft Ordinance does not adequately protect rural communities from the glare, noise, dust, lights, and water resource impacts of renewable energy projects, and it facilitates the industrialization of rural communities, the ruination of significant ridgelines, and the violation of Community Standards District ("CSD") protections.

Worse yet the draft Ordinance allows energy developers to sidestep the few protections that do exist by simply requesting a "modification" to the requirements based on a claim that they "unreasonably interfere" with development., The only basis for denying such requests is if the County finds them to be "contrary to the purpose" of the Ordinance. However, the County will ***never*** be able to make such a finding because the entire purpose of the Ordinance is to "support and facilitate" the development of Energy projects

The circular structure of this draft ordinance ensures that large-scale energy projects will proceed quickly, with little or no community input, and without regard for community impacts. This is completely unacceptable, and the draft Ordinance must be revised to strengthen (rather than decimate) protections for established rural residential communities like Acton.

CSD PROVISIONS MUST PREVAIL

CSDs are established for developed residential areas, and they include provisions that are intended to protect these residential uses from incompatible industrial development such as utility-scale generation projects.

Nonetheless, the draft Ordinance subordinates all CSD provisions, and in instances where the draft Ordinance regulates matters that are also addressed by CSD provisions, the draft Ordinance prevails.

The draft Ordinance must be revised to ensure that CSD provisions prevail. The reasons are obvious; granting industrial uses the ability to sidestep community protection provisions of any CSD "by right" undermines the entire CSD structure.

Any renewable energy proponent wishing to develop a project that does not comply with a CSD provision should be required to go through the variance process just like any other project proponent that wishes to avoid CSD requirements.

Energy developers should not be granted a perfunctory "pass" to allow them to completely ignore the very development standards that communities have fought hard for and which protects residents from incompatible development.

ATTACHMENT 2: ADDITIONAL CORRESPONDENCE RECEIVED SINCE THE MARCH 18 HEARING

The Regional Planning Commission
County of Los Angeles
320 W. Temple Street
Los Angeles, California 90012
Electronic Transmittal of 6 [six] pages
[c/o Ms. Rosie Ruiz: RRuiz@planning.lacounty.gov]

March 20, 2015

Subject: The Draft Renewable Energy Ordinance and Information Submitted Pursuant to Matters Raised in the March 18, 2015 Public Hearing

Dear Planning Commissioners;

I appreciate the time and effort that all of you took to address community concerns in your consideration of the Draft Renewable Energy Ordinance at the March 18 public hearing. The matter was continued due to uncertainties regarding potential conflicts with adopted standards districts as well as uncertainties regarding the possibility of preemption of some ordinance provisions by state law. This letter is intended to address these concerns, and also provide supplemental information which clarifies certain remarks and representations that were made by staff and County Counsel. In the absence of a transcript, I am relying on my notes, which I believe are reasonably accurate.

Conflicts with State Law

Staff and County Counsel made a number of remarks regarding state law and its relation to renewable energy standards, wind turbine classification and permitting, and solar energy development which seemed to give the impression that state law largely preempts the County's authority to regulate renewable projects. This is not true, as evidenced by the following:

- There are no state laws which regulate or establish wind turbine size classifications; in such matters, the California Energy Commission relies on "industry standards" which establish that a 50 kW wind turbine is an intermediate utility-scale system.

- There is nothing in state or federal law which limits the County's ability to regulate the environmental, health, safety, and aesthetic impacts of wind energy systems. Nor are there any state or federal laws which preempt or prevent the County from establishing a residential wind turbine limit of 15 kW (as I have requested)

- Staff displayed a slide indicating the state's renewable energy standard of 33% by 2020, and indicated that this standard somehow applies to the County's ordinance development process. However, the 33% renewable energy standard does not apply to, or control, any County action. In fact, the 33% standard applies specifically to energy utilities (such as Southern California Edison), and it requires that these utilities obtain a fixed percentage of the energy they deliver from renewable resources. It does not impose any requirements or limitations on local agencies.

As written, the Draft Ordinance already complies (explicitly and fully) with both the language and the intent of the Act because it provides ministerial approval of both small-scale and roof-mounted utility scale solar installations "by right" through the building permit process. And consistent with the Act, the only solar installations that are subject to a "use permit" process are 1) Ground-mounted large utility-scale developments on lands zoned as A2, commercial, industrial, RR, and W; and 2) Structure mounted developments in R1-zoned land. The ordinance establishes that all other installations are approved through ministerial building permits. Equally important is the fact that ***none*** of this would change if the ordinance were revised to accommodate all the matters raised by the public in the hearing. Contrary to what was indicated by staff and County Counsel, the Draft Ordinance would still comply fully with the Act even if all of the recommendations made by the public were integrated into it. This fact is supported by the plain language of the Act itself, which states (in pertinent part and with emphasis added):

9.5 CALIFORNIA GOVERNMENT CODE SECTION 65850.5

(a) The implementation of consistent statewide standards to achieve the timely and cost effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability ***of homeowners and agricultural and business concerns to install solar energy systems***. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

(b) ***A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit***. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. ***The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety.*** However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, ***the city or county may require the applicant to apply for a use permit.***

It should also be noted that the Act authorizes the County to deny a use permit application for a solar project based on findings that the adverse health and safety impacts created by the project cannot be feasibly mitigated. At the public hearing, three substantial health and safety concerns relative to ground-mounted solar projects were raised that are not properly addressed in the Draft ordinance (and have NEVER been mitigated in any solar projects installed to date). These impacts (glare, dust, and valley fever) pose significant

- As an established accessory use, the County will be unable to limit the total area of solar panels on a residential or agricultural lot based on whether or not the staff believe the energy will be used "on-site" or "off-site".

I have never seen the County conduct an "environmental review" of any "by right" accessory use, and I have never seen the County restrict any "by right" accessory use to anything less than what the code allows. In other words, I have never seen the County implement any of the "limiting" actions that Mr. Lee described to the Planning Commission. It should be noted that the draft Ordinance already authorizes unlimited *utility-scale* solar facilities as a "structure" use that is permitted "by right" in almost every zoning category (including rural residential and agricultural).

To address these concerns, and to be consistent with AB 2188, I suggest that the Draft Ordinance be revised to define "small-scale" solar energy systems as being roof or parking lot mounted (and therefore categorically exempt from CEQA review), and establish a 25 kW size limits for accessory solar energy systems in commercial and industrial zones, and a 10 kW size limit for accessory solar energy systems in residential and agricultural zones. This revision complies fully with all state laws, and addresses the concerns that I raised. If a particular commercial or industrial facility wishes to increase this limit to support its "on-site" energy needs, then it can easily do so via the minor CUP process authorized in 22.52.1640 of the Draft Ordinance.

Conflicts between CSD's and the Draft Renewable Energy Ordinance.

Mr. Child indicated that staff had not perceived any substantial conflicts between the Draft Renewable Energy Ordinance and any CSD provisions. If this is true, then staff had no reason to include a statement in the draft ordinance which explicitly subordinates all CSD provisions. Nonetheless, such a statement was included. More to the point, there are numerous and substantial conflicts between the Draft Ordinance and the Acton CSD. The following list identifies some of these conflicts; it was put together quickly, so there may be other conflicts that would be identified via a more detailed review.

- The Draft Ordinance authorizes structures as high as 500 feet in height. This conflicts with the 35 foot structure height limit imposed by the Acton CSD [22.44.126(C) (3)].

- Ground-mounted utility scale wind and solar structure conflict with the CSD requirement that external utility devices be concealed, and non-residential uses have a "western style" design.

- The Draft Ordinance protects only "significant ridgelines identified in the General Plan... Area Plan, ... or CSD". The problem is, Acton has no specifically identified significant ridgelines. Instead, the Acton CSD generally describes what constitutes a significant ridgeline, and simply urges that the "natural silhouette" of these ridgeline area be "preserved to the greatest extent possible". Because these ridgelines are not

From:	Paul Henreid
To:	Jay Lee
Cc:	Susan Tae; rodninahallgren@gmail.com
Subject:	Renewable Energy Ordinance
Date:	Friday, March 20, 2015 7:53:45 AM

Dear Mr. Lee,

The REO is supposed to encourage using small-scale (on-site) solar/wind energy. However, the ordinance regulates small-scale solar/wind in ways it does not regulate utility-scale solar/wind. For example, the REO sets a maximum lot coverage for small-scale solar at "25 percent of the lot or parcel of land or 2.5 acres, whichever is lesser." The REO states "A small-scale solar energy system that exceeds the maximum lot coverage ... requires approval of a Minor Conditional Use Permit." Why limit on-site solar like this at all? Could this language be removed?

Another bird regulation applies to small-scale wind, but not utility-scale wind: "No part of the small-scale wind energy system shall be closer than one mile from a known golden eagle nest site." What is a known golden eagle nest site? Where are the golden eagles? Is there a web site announcing their location? Do golden eagles have GPS microchips like the dogs in LA county to alert the County of their whereabouts?
Do golden eagles move nests or make new nests? One mile is a long distance. Is one mile necessary to protect golden eagles from small-scale structure-mounted wind towers that do not "exceed the height limit of the zone by more than five feet?" The REO only requires small-scale wind to be 300 feet from "bat-roosting sites." There is a big difference between 300 feet and 1 mile. Do small-scale wind towers require more stringent golden eagle protection than from utility scale? Can the language be removed or reduced from 1 mile to 1000 feet?

I look forward to your comments.

Thank You,

Paul Henreid, Esq.
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